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STELLAR RECOVERY, INC.

11
12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14
15 TIMOTHY TOTH and GARY HALL,
individually and on behalf of all others
similarly situated,

16 Plaintiffs,

17 vs.

18 STELLAR RECOVERY, INC.,

19 Defendant.

20 Case No: 2:13-cv-01276-LDG(GWF)

21 **DEFENDANT'S NOTICE OF RECENT
CASE AUTHORITY**

22 Action Filed: July 19, 2013

23 Trial Date: None Set

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On January 27, 2014, Defendant filed its reply documents in support of its motion for summary judgment. (*Docket # 24.*) Since the briefing of Defendant's Motion for Summary Judgment, two subsequent cases have been published dealing with the same issue set forth in Defendant's Motion for Summary Judgment:

If the defendant's dialing technology does not have the capacity to randomly or sequentially generate numbers to be called, it cannot qualify as an ATDS under the statute.

The two new cases are:

1. *Gragg, v. Orange Cab Company, Inc.*, 2014 WL 494862 (Feb. 7, 2014, W.D. Wash.); and
2. *Dominguez v. Yahoo!, Inc.*, 2014 WL 1096051 (March 20, 2014, E.D. PA.).

Both cases concluded that because the defendants dialing technology did not have the capacity to randomly or sequentially generate numbers to be called, they did not qualify as an ATDS under the statute.

Defendant believes it is necessary to submit this notice because in Plaintiffs' Opposition to the pending Motion for Summary Judgment, Plaintiffs' argued that this Court should ignore the only other known case, *Stockwell v. Credit Management, L.P.*, Case No. 30-2012-00596110-CU-NP-CXC, that squarely addressed this issue because it was a California State Court opinion. (Docket # 06:15 - 07:01 .)

These two federal District Court cases directly support Defendant's arguments, and its reliance on the *Stockwell* case.

Dated: March 31, 2014

FOLEY & MANSFIELD, PLLP

By: */s/ Sean P. Flynn*

Sean P. Flynn
Attorney for Defendant
STELLAR RECOVERY, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 300 S. Grand Ave., Suite 2800, Los Angeles, CA 90071.

On March 31, 2014, I served the foregoing document described as:

DEFENDANT'S NOTICE OF RECENT CASE AUTHORITY.

On the following persons:

David Krieger, Esq. HAINES & KRIEGER, LLC 8985 S. Eastern Avenue Suite 130 Henderson, Nevada 89123	Attorney for Plaintiffs
Danny J. Horen, Esq. Kazerouni Law Groups, APC 7854 W. Sahara Avenue Las Vegas, NV 89117	Attorney for Plaintiffs
Mr. Todd M. Friedman, Esq. Law Offices of Todd M. Friedman, PC 369 S. Doheny Drive, #415 Beverly Hills, CA, 90211	Attorney for Plaintiffs

(BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF systems, to the parties and/or counsel who are registered CM/ECF Users set forth in the service list contained from this court.

[FEDERAL] I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 31, 2014, Los Angeles, California.

/s/ Sean P. Flynn
Sean P. Flynn